

STATE OF MICHIGAN  
COURT OF APPEALS

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CATHERINE KULHANEK and ROBERT  
KULHANEK,

UNPUBLISHED  
February 25, 2010

Plaintiffs-Appellees,

v

STATE OF MICHIGAN,

No. 288382  
Court of Claims  
LC No. 08-000897-NI

Defendant-Appellant.

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Before: Beckering, P.J., and Markey and Borrello, JJ.

BECKERING, J. (*concurring*).

I concur in the outcome of the majority in reversing and remanding this case. I write separately, however, because I would rely solely on plaintiffs' failure to comply with the notice content requirements set forth in MCL 691.1404(1), specifically with regard to plaintiffs' injuries. MCL 691.1404(1) provides:

As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, **the injury sustained** and the names of witnesses known at the time by the claimant. [Emphasis added.]

The Michigan Supreme Court recently noted that MCL 691.1404 "is straightforward, clear, unambiguous, and not constitutionally suspect," and therefore, "must be enforced as written." *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007).

Plaintiffs allege that on July 1, 2006, plaintiff Catherine Kulhanek lost control of her vehicle while traveling on I-94 and collided with the median wall as a result of an open manhole cover. Plaintiff Robert Kulhanek was Catherine's passenger. On August 15, 2006, plaintiffs' counsel sent a letter to the Michigan Department of Transportation (MDOT). The letter stated, in part:

**Re: Our Client: Catherine and Robert Kulhanek**  
**Date of Incident: 7/1/06**  
**Location: Westbound I-94 and Oakwood Blvd.**

To Whom it May Concern:

This is to inform you that this office has been retained by the above named client pursuant to injuries they sustained when their vehicle hit a loose manhole cover.

Please forward this letter to your Insurance Carrier, in order that they may contact this office regarding this matter. **In the event you did not have insurance on the date of this incident, please contact the undersigned within ten (10) days upon receipt of this letter to avoid the necessity of litigation.** Enclosed please find a copy of the Michigan State Police Report, with regard to this claim.

All questions, inquiries, and discussions pursuant to our client's claim should be directed solely to the attention of this office. [Emphasis in original.]

Plaintiffs' August 15, 2006, letter contains no description of plaintiffs' alleged injuries.<sup>1</sup> Although plaintiffs enclosed with the letter a copy of the Michigan State Police Report, it likewise contains no description of plaintiffs' alleged injuries.<sup>2</sup> Had plaintiffs provided a brief description of the injuries in the letter, or even attached a copy of pertinent medical records available at the time, they may have met their statutory obligation with respect to the required contents of the notice. When viewed as a whole, it cannot reasonably be stated that plaintiffs' letter and attachment complied with the content requirements of MCL 691.1404(1), and this Court is required to find the notice fatally defective.

In light of plaintiffs' failure to comply with MCL 691.1404(1), I would deem it unnecessary to address defendant's other issues.

/s/ Jane M. Beckering

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<sup>1</sup> In their brief on appeal, plaintiffs point out that they also sent a letter on September 22, 2006, but that letter is even less illuminating, and merely seeks from MDOT written acknowledgment of plaintiff counsel's attorney lien.

<sup>2</sup> Curiously, not even plaintiffs' complaint, filed two years after the accident, contains any description of plaintiffs' alleged injuries from the July 1, 2006, accident.